

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

In re:

STEPHANIE LYNN FERGURSON

Case No. 11-08219-8-JRL

CHAPTER 13

**NOTICE OF MOTION**

TO: WELLS FARGO DEALER SERVICES AND TRUSTEE, AND OTHER PARTIES IN INTEREST

NOTICE IS HEREBY GIVEN of the "Motion To Use Cash Collateral And To Allow Substitution of Collateral" (the "Motion"), filed simultaneously herewith by Stephanie Lynn Ferguson, the Debtor in the above-captioned case (the "Debtor"); and

FURTHER NOTICE IS HEREBY GIVEN that the Motion may be granted provided no response and request for a hearing is filed by a creditor or other party in interest with the Clerk of the above-captioned court and served upon Debtor's counsel within twenty-one (21) days of the date of this notice; and

FURTHER NOTICE IS HEREBY GIVEN that if timely written response and a request for a hearing is filed with the Clerk of the above-captioned court, and served upon Debtor's counsel, a hearing may be conducted on the Motion at a date, time and place to be set by the Court, and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion and any response thereto ex parte without further notice.

DATE OF NOTICE: April 26, 2012

ADAMS, PORTNOY & BERGGREN, PLLC

/s/William G. Berggren

William G. Berggren  
State Bar No. 18675  
Post Office Box 18306  
Raleigh, NC 27619  
Telephone: (919) 875-8773

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

In re:

STEPHANIE LYNN FERGURSON

Case No. 11-08219-8-JRL

CHAPTER 13

MOTION TO USE CASH COLLATERAL AND  
TO ALLOW SUBSTITUTION OF COLLATERAL

Stephanie Lynn Fergurson, the Debtor in the above captioned case hereby moves the court pursuant to 11 U.S.C. § 105(a), 1303 and 363(b), to use cash collateral and to allow substitution of collateral in this case. In support of the Motion the Debtor respectfully represents:

1. This case was filed on October 27, 2011. The Debtor's plan has not yet been confirmed, although there is a pending motion for confirmation.

2. The Debtor's schedules of creditors includes Wells Fargo Dealer Services, Inc., ("Wells Fargo") which is secured by a lien on a 2008 Infinity EX35-V6 ("Vehicle"). Wells Fargo has filed a proof of claim asserting a secured claim in the amount of \$29,705.28.

3. The Vehicle was totaled in an accident, and the damage to the Vehicle is covered by an insurance policy issued by Nationwide Insurance Company ("Nationwide"). Nationwide is prepared to pay \$26,598.00 in connection with this total loss.

4. The Debtor is in need of a replacement vehicle for transportation to work and for household maintenance. The Debtor has no other means to obtain a replacement vehicle except by using the insurance proceeds to be paid by Nationwide.

5. The insurance proceeds are property of the estate. The insurance was intended to provide for the replacement of the Vehicle in the event of a total loss. The Debtor wishes to use the entire insurance proceeds to purchase a replacement vehicle, and turn the title to the replacement vehicle over to Wells Fargo to serve as replacement collateral on the obligation. The Debtor's plan will continue to provide payment in full on Wells Fargo's secured claim in the amount of \$29,705.28. Which claim is provided for at 5.25% though the Debtor's plan. The proposed order to be submitted in connection with this Motion will provide that Wells Fargo is deemed to have a first lien upon such replacement vehicle for purposes of securing its obligation and for purposes of the chapter 13 plan and will require the Debtor to turn over the title to the replacement vehicle to Wells Fargo as soon as it is received by the Debtor.

6. In order to facilitate release of the insurance proceeds to the Debtor, and, in turn, the purchase and substitution of a replacement vehicle, the Debtor requests that the order require

Wells Fargo to immediately turn over to Nationwide the title to the Vehicle, making whatever notations thereon, or providing such other documentation as is necessary, to provide Nationwide with title free of Wells Fargo's lien.

7. The Debtor shall also be required to pay over to the Chapter 13 Trustee any portion of the insurance proceeds not used in the purchase of the replacement vehicle, which amount, if any, is to be paid to Wells Fargo on its secured claim, and its secured claim will be adjusted by the chapter 13 Trustee accordingly.

WHEREFORE, the Debtor hereby requests that she be allowed to convey her interest in the Vehicle to Nationwide free of liens, and to use the entire proceeds of said insurance payment to purchase a replacement vehicle and to substitute such replacement vehicle as collateral with respect to the obligation owing to Wells Fargo; and to facilitate the substitution of collateral, that Wells Fargo be ordered to release the lien on the 2008 Infinity EX35-V6 in consideration for a lien on the replacement vehicle; and for such other and further relief the court may deem just and proper.

Respectfully submitted this the 26<sup>th</sup> day of April, 2012.

ADAMS, PORTNOY & BERGGREN, PLLC

/s/William G. Berggren

William G. Berggren  
State Bar No. 18675  
Post Office Box 18306  
Raleigh, NC 27619  
Telephone: (919) 875-8773

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

In re:

STEPHANIE LYNN FERGURSON

Case No. 11-08219-8-JRL

CHAPTER 13

CERTIFICATE OF SERVICE

I, William G. Berggren, of the Law Firm of Adams, Portnoy & Berggren, PLLC, do hereby certify, under penalty of perjury, that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age; and that on April 26, 2012, I served copies of the foregoing Notice of Motion and Motion to Use Cash Collateral and to Allow Substitution of Collateral:

by regular U.S. mail, upon the parties set forth below:

Wells Fargo Dealer Services, Inc.  
Attn: Managing Agent  
PO Box 19657  
Irvine, CA 92623-9657

Nationwide Insurance Company  
Attn: Managing Agent  
One Nationwide Plaza  
Columbus, OH 43215-2220

by electronic service, upon the parties set forth below:

Robert R. Browning  
Interim Chapter 13 Trustee

/s/William G. Berggren  
William G. Berggren